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February 2, 1996

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William F. Caton
Acting Secretary
Federal Communications Commission
Room 222
1919 M Street, N.W.
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

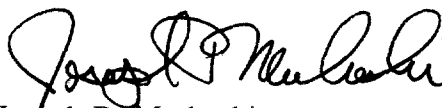
Re: Ex Parte Presentation -- CC Docket No. 93-22

Dear Mr. Caton:

On Friday, February 2, 1996, representatives of GE Information Services ("GEIS") made an ex parte presentation to John Nakahata, Special Assistant to Chairman Reed E. Hundt. Representing GEIS were Warner Sinback and the undersigned of this Firm. The views expressed on behalf of GEIS are reflected in the enclosed materials.

Please let us know if you have any questions.

Sincerely,



Joseph P. Markoski

/jef
Enclosures

cc: John Nakahata (w/out encl.)



EX PARTE OR LATE FILED

GE Information Services

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**EX PARTE PRESENTATION -- POLICIES AND RULES
IMPLEMENTING THE TELEPHONE DISCLOSURE AND DISPUTE
RESOLUTION ACT, CC DOCKET NO. 93-22**

**I. LEGITIMATE INFORMATION SERVICE PROVIDERS HAVE TRADITIONALLY
ESTABLISHED BUSINESS RELATIONSHIPS WITH CUSTOMERS THROUGH
WRITTEN CONTRACTS OR THE USE OF GENERAL PURPOSE CREDIT CARDS.**

- High-volume customers generally obtain information services pursuant to written contracts that are the product of face-to-face discussions with individual sales representatives.
- Home enthusiasts and small businesses generally subscribe to information services either through the mails, using preprinted order forms, or while on-line, using general purpose credit cards.

**II. THE GROWING AWARENESS AND USE OF INFORMATION SERVICES HAVE
CREATED ADDITIONAL OPPORTUNITIES TO MARKET SERVICES TO, AND
ENTER SUBSCRIPTION AGREEMENTS WITH, NEW CUSTOMERS ON AN ON-
LINE BASIS.**

- Information service providers advertise their services in printed media, as well as in cyberspace. These advertisements invite potential customers to contact information service providers -- free of charge through an 800 Service number -- to obtain further information about their services and subscribe.
- Computer-literate customers, using their PCs or computer systems, are responding to these advertisements in increasing numbers.
- Whether prompted by advertising or exigent business circumstances, many customers are interested in subscribing and obtaining immediate on-line access to the information services about which they call.
- Many of these new customers are small-to-medium-sized businesses that require monthly invoices from their vendors.
- The use of 800 Service by these customers in contacting information service providers implicates the provisions of Section 228(c)(7) of the Act.

III. IF THE COMMISSION DETERMINES THAT "WRITTEN" PRESUBSCRIPTION OR COMPARABLE ARRANGEMENTS ARE NECESSARY TO PROTECT CONSUMERS, IT SHOULD PERMIT THE USE OF AGREEMENTS THAT ARE ELECTRONICALLY TRANSMITTED AND EXECUTED.

- Electronic commerce -- i.e., freeing business from its dependence on paper and the physical handling and transmission of documents -- is at the heart of the Information Age and a prototypical use of the National Information Infrastructure.
- The use of on-line agreements will provide subscribers with immediate access to the information services they want and need. Requiring the use of agreements that are recorded on paper and sent through the mails will needlessly frustrate the efficient marketing of information services and delay their availability to consumers.
- The legitimacy of on-line agreements and their value in protecting consumers have been recognized by the amendments to Section 228(c) of the Communications Act made by the "Telecommunications Act of 1996."
- Any risk of loss presented by the use of on-line agreements lies with information service providers that offer service to subscribers pursuant to these agreements. If these agreements are unenforceable, information service providers may have difficulty collecting for their services; if these contracts are enforceable, subscribers will be protected by their terms.
- Consumers will be able to protect themselves by printing or downloading a copy of their subscription agreements and retaining them for their records.
- The use of on-line agreements will not materially increase the likelihood that presubscription or comparable arrangements are executed by individuals who are not legally competent. To the extent that the use of on-line agreements does enhance that possibility, information service providers -- and not consumers -- will be at risk.
- In short, the use of on-line agreements is totally consistent with the Telecommunications Act of 1996, the Telephone Disclosure and Dispute Resolution Act, and the Commission's goals in this proceeding.
- Therefore, if Section 64.1501(b) is to be amended, the rule should expressly permit the use of on-line agreements.

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FEDERAL COMMUNICATIONS COMMISSION
HLO OFFICE OF SECRETARY

104TH CONGRESS }
2d Session }

SENATE

{ REPORT
104-_____

TELECOMMUNICATIONS ACT OF 1996

_____. 1996.—Ordered to be printed

Mr. Pressler, from the committee of conference,
submitted the following

CONFERENCE REPORT

[To accompany S. 652]

The committee of conference on the disagreeing votes of the two Houses on the amendments of the House to the bill (S. 652), to provide for a pro-competitive, de-regulatory national policy framework designed to accelerate rapidly private sector deployment of advanced telecommunications and information technologies and services to all Americans by opening all telecommunications markets to competition, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the Senate recede from its disagreement to the amendment of the House to the text of the bill and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the House amendment, insert the following:

SEC. 602. PREEMPTION OF LOCAL TAXATION WITH RESPECT TO DIRECT-TO-HOME SERVICES.

(a) **PREEMPTION.**—A provider of direct-to-home satellite service shall be exempt from the collection or remittance, or both, of any tax or fee imposed by any local taxing jurisdiction on direct-to-home satellite service.

(b) **DEFINITIONS.**—For the purposes of this section—

(1) **DIRECT-TO-HOME SATELLITE SERVICE.**—The term “direct-to-home satellite service” means only programming transmitted or broadcast by satellite directly to the subscribers’ premises without the use of ground receiving or distribution equipment, except at the subscribers’ premises or in the uplink process to the satellite.

(2) **PROVIDER OF DIRECT-TO-HOME SATELLITE SERVICE.**—For purposes of this section, a “provider of direct-to-home satellite service” means a person who transmits, broadcasts, sells, or distributes direct-to-home satellite service.

(3) **LOCAL TAXING JURISDICTION.**—The term “local taxing jurisdiction” means any municipality, city, county, township, parish, transportation district, or assessment jurisdiction, or any other local jurisdiction in the territorial jurisdiction of the United States with the authority to impose a tax or fee, but does not include a State.

(4) **STATE.**—The term “State” means any of the several States, the District of Columbia, or any territory or possession of the United States.

(5) **TAX OR FEE.**—The terms “tax” and “fee” mean any local sales tax, local use tax, local intangible tax, local income tax, business license tax, utility tax, privilege tax, gross receipts tax, excise tax, franchise fees, local telecommunications tax, or any other tax, license, or fee that is imposed for the privilege of doing business, regulating, or raising revenue for a local taxing jurisdiction.

(c) **PRESERVATION OF STATE AUTHORITY.**—This section shall not be construed to prevent taxation of a provider of direct-to-home satellite service by a State or to prevent a local taxing jurisdiction from receiving revenue derived from a tax or fee imposed and collected by a State.

TITLE VII—MISCELLANEOUS PROVISIONS

SEC. 701. PREVENTION OF UNFAIR BILLING PRACTICES FOR INFORMATION OR SERVICES PROVIDED OVER TOLL-FREE TELEPHONE CALLS.

(a) **PREVENTION OF UNFAIR BILLING PRACTICES.**—

(1) **IN GENERAL.**—Section 228(c) (47 U.S.C. 228(c)) is amended—

(A) by striking out subparagraph (C) of paragraph (7) and inserting in lieu thereof the following:

“(C) the calling party being charged for information conveyed during the call unless—

“(i) the calling party has a written agreement (including an agreement transmitted through electronic

medium) that meets the requirements of paragraph (8); or

"(ii) the calling party is charged for the information in accordance with paragraph (9); or";

(B)(i) by striking "or" at the end of subparagraph (C) of such paragraph;

(ii) by striking the period at the end of subparagraph (D) of such paragraph and inserting a semicolon and "or"; and

(iii) by adding at the end thereof the following:

"(E) the calling party being assessed, by virtue of being asked to connect or otherwise transfer to a pay-per-call service, a charge for the call."; and

(C) by adding at the end the following new paragraphs:

"(8) SUBSCRIPTION AGREEMENTS FOR BILLING FOR INFORMATION PROVIDED VIA TOLL-FREE CALLS.—

"(A) IN GENERAL.—For purposes of paragraph (7)(C)(i), a written subscription does not meet the requirements of this paragraph unless the agreement specifies the material terms and conditions under which the information is offered and includes—

"(i) the rate at which charges are assessed for the information;

"(ii) the information provider's name;

"(iii) the information provider's business address;

"(iv) the information provider's regular business telephone number;

"(v) the information provider's agreement to notify the subscriber at least one billing cycle in advance of all future changes in the rates charged for the information; and

"(vi) the subscriber's choice of payment method, which may be by direct remit, debit, prepaid account, phone bill, or credit or calling card.

"(B) BILLING ARRANGEMENTS.—If a subscriber elects, pursuant to subparagraph (A)(vi), to pay by means of a phone bill—

"(i) the agreement shall clearly explain that the subscriber will be assessed for calls made to the information service from the subscriber's phone line;

"(ii) the phone bill shall include, in prominent type, the following disclaimer:

"Common carriers may not disconnect local or long distance telephone service for failure to pay disputed charges for information services."; and

"(iii) the phone bill shall clearly list the 800 number dialed.

"(C) USE OF PINS TO PREVENT UNAUTHORIZED USE.—A written agreement does not meet the requirements of this paragraph unless it—

"(i) includes a unique personal identification number or other subscriber-specific identifier and requires a subscriber to use this number or identifier to obtain

access to the information provided and includes instructions on its use; and

"(ii) assures that any charges for services accessed by use of the subscriber's personal identification number or subscriber-specific identifier be assessed to subscriber's source of payment elected pursuant to subparagraph (A)(vi).

"(D) EXCEPTIONS.—Notwithstanding paragraph (7)(C), a written agreement that meets the requirements of this paragraph is not required—

"(i) for calls utilizing telecommunications devices for the deaf;

"(ii) for directory services provided by a common carrier or its affiliate or by a local exchange carrier or its affiliate; or

"(iii) for any purchase of goods or of services that are not information services.

"(E) TERMINATION OF SERVICE.—On receipt by a common carrier of a complaint by any person that an information provider is in violation of the provisions of this section, a carrier shall—

"(i) promptly investigate the complaint; and

"(ii) if the carrier reasonably determines that the complaint is valid, it may terminate the provision of service to an information provider unless the provider supplies evidence of a written agreement that meets the requirements of this section.

"(F) TREATMENT OF REMEDIES.—The remedies provided in this paragraph are in addition to any other remedies that are available under title V of this Act.

"(9) CHARGES BY CREDIT, PREPAID, DEBIT, CHARGE, OR CALLING CARD IN ABSENCE OF AGREEMENT.—For purposes of paragraph (7)(C)(ii), a calling party is not charged in accordance with this paragraph unless the calling party is charged by means of a credit, prepaid, debit, charge, or calling card and the information service provider includes in response to each call an introductory disclosure message that—

"(A) clearly states that there is a charge for the call;

"(B) clearly states the service's total cost per minute and any other fees for the service or for any service to which the caller may be transferred;

"(C) explains that the charges must be billed on either a credit, prepaid, debit, charge, or calling card;

"(D) asks the caller for the card number;

"(E) clearly states that charges for the call begin at the end of the introductory message; and

"(F) clearly states that the caller can hang up at or before the end of the introductory message without incurring any charge whatsoever.

"(10) BYPASS OF INTRODUCTORY DISCLOSURE MESSAGE.—The requirements of paragraph (9) shall not apply to calls from repeat callers using a bypass mechanism to avoid listening to the introductory message, provided that information providers shall disable such a bypass mechanism after the institution of

any price increase and for a period of time determined to be sufficient by the Federal Trade Commission to give callers adequate and sufficient notice of a price increase.

"(11) **DEFINITION OF CALLING CARD.**—As used in this subsection, the term 'calling card' means an identifying number or code unique to the individual, that is issued to the individual by a common carrier and enables the individual to be charged by means of a phone bill for charges incurred independent of where the call originates."

(2) **REGULATIONS.**—The Federal Communications Commission shall revise its regulations to comply with the amendment made by paragraph (1) not later than 180 days after the date of enactment of this Act.

(3) **EFFECTIVE DATE.**—The amendments made by paragraph (1) shall take effect on the date of enactment of this Act.

(b) **CLARIFICATION OF "PAY-PER-CALL SERVICES".**—

(1) **TELEPHONE DISCLOSURE AND DISPUTE RESOLUTION ACT.**—Section 204(1) of the Telephone Disclosure and Dispute Resolution Act (15 U.S.C. 5714(1)) is amended to read as follows:

"(1) The term 'pay-per-call services' has the meaning provided in section 228(i) of the Communications Act of 1934, except that the Commission by rule may, notwithstanding subparagraphs (B) and (C) of section 228(i)(1) of such Act, extend such definition to other similar services providing audio information or audio entertainment if the Commission determines that such services are susceptible to the unfair and deceptive practices that are prohibited by the rules prescribed pursuant to section 201(a)."

(2) **COMMUNICATIONS ACT.**—Section 228(i)(2) (47 U.S.C. 228(i)(2)) is amended by striking "or any service the charge for which is tariffed."

SEC. 702. PRIVACY OF CUSTOMER INFORMATION.

Title II is amended by inserting after section 221 (47 U.S.C. 221) the following new section:

"SEC. 222. PRIVACY OF CUSTOMER INFORMATION.

"(a) **IN GENERAL.**—Every telecommunications carrier has a duty to protect the confidentiality of proprietary information of, and relating to, other telecommunication carriers, equipment manufacturers, and customers, including telecommunication carriers reselling telecommunications services provided by a telecommunications carrier.

"(b) **CONFIDENTIALITY OF CARRIER INFORMATION.**—A telecommunications carrier that receives or obtains proprietary information from another carrier for purposes of providing any telecommunications service shall use such information only for such purpose, and shall not use such information for its own marketing efforts.

"(c) **CONFIDENTIALITY OF CUSTOMER PROPRIETARY NETWORK INFORMATION.**—

"(1) **PRIVACY REQUIREMENTS FOR TELECOMMUNICATIONS CARRIERS.**—Except as required by law or with the approval of the customer, a telecommunications carrier that receives or ob-